

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

Clerk's Minutes
Before the Honorable Robert C. Brack

CASE No.: CR 19-1715 RB DATE: 8/18/2020

Time in court: 1 hour, 11 minutes

TITLE: United States v. James Benvie

COURTROOM CLERK: Jessica Chavez COURT REPORTER: Vanessa Alyce

() Albuquerque (X) Las Cruces () Santa Fe () Roswell

() Bench warrant ordered INTERPRETER:

ATTORNEYS PRESENT FOR PLAINTIFF(S):

Renee Camacho

ATTORNEYS PRESENT FOR DEFENDANT(S):

Orlando Mondragon

PROBATION OFFICER: ANTHONY CARTER

TYPE OF PROCEEDING: Show cause/Detention (Pretrial violation)

EVIDENTIARY: Yes

PROCEEDINGS:

1:34. Court in Session by ZOOM.

Court: here on Show cause/Detention (pretrial violation) Government call first witness.

Ms. Camacho calls Anthony Carter W1 (Sworn) Pretrial officer supervising Mr. Benvie. Living at halfway house. Only to leave halfway house purpose of employment. Adjustment to supervision. Concerns with social media, advise to stay away. August 2, 2020, petition. Halfway house contacted Mr. Carter, live stream via Facebook. Mr. Benvie works at Philiy's in

downtown Albuquerque. Evening of August 2, 2020 Mr. Benvie was supposed to be at work. Mr. Benvie logged out of work, 5:17 p.m., arrival time at La Posada was 1:00 am. Video was live stream on Face book, author of video was James Benvie. Video was 1 ½ hours. Video went from daylight to evening. Mr. Benvie did not have any permission from Pretrial office Carter to be anywhere except for work, halfway house. La Posada indicated Mr. Benvie would no longer be able to reside at La Posada. Employer shut down restaurant. Information that there were armed individuals in restaurant, members of Civil guard. Relationship between Mr. Benvie and members of civil guard. Received report that Mr. Benvie asked members to protect business. Report from APD, indicated there were 9 members of civil guard in building. Confrontation between protestors and civil guard group.

Pass W1

Mr. Mondragon cross examination W1. Social media at halfway house. Mr. Benvie clocked out at 5:17 p.m. Do not know if anyone clocked Mr. Benvie out of work without his knowledge. Prior damage at restaurant. Civic center a couple of blocks from restaurant.

Ms. Camacho calls Marcy Sanner W2 (Sworn) General manager of Philly's in Albuquerque. Relationship with Mr. Benvie. Ms. Sanner general manager, Mr. Benvie continued to work at restaurant. Restaurant remained open during covid. Operating hours were cut back, 11 am – 9:00 pm. Mr. Benvie job responsibilities. Most of the time Mr. Benvie sat watching live streams on social media. When restaurant closed at 9:00 pm, Mr. Benvie would stay. Mr. Benvie stated halfway did not come pick him up until midnight. No work

reason for Mr. Benvie to stay at restaurant, would have friends visit. August 2, 2020 Ms. Sanner was not working. Mr. Benvie convinced Ms. Sanner to take weekend off during protests. When Ms. Sanner left approximately 6:00 pm, she saw 4 men with camoflauge carrying rifle cases. One of the men asked if there was roof access. Ms. Sanner returned Monday morning. Mr. Benvie told Ms. Sanner they were attacked over the weekend, someone tried breaking down door. Social media person for restaurant contacted Ms. Sanner stating people were making negative comments about restaurant. Ms. Sanner found red box of empty ammunition. Mr. Benvie told Ms. Sanner that he closed the restaurant at 5:00 pm. Mr. Benvie clocked out and counted out the cash drawer.

PassW2

Mr. Mondragon cross examination W2. Mr. Benvie began working August 2019. Ms. Sanner came back February 2020. Mr. Benvie stand in general manager until Ms. Sanner came back. Ms. Sanner discussions with owner about firing Mr. Benvie. Damage to the restaurant May 31, June 1 because of protesters. August 2, 2020 Mr. Benie clocked out at 5:17 p.m., passcode. Ms. Sanner can modify time people clock out. Relationship became frustrating. Mr. Benvie did not want to follow health code.

Ms. Camacho calls Daryl Agnes W3 (Sworn) Employed by La Posada, program director.
Familiar with Mr. Benvie. During pandemic, transportation to and from work by La Posada. Residents would call La Posada for ride. Mr. Benvie was allowed to be always from La Posada

house for work purposes only. July into August, common for Mr. Benvie to check in around midnight-1:00 am. Understanding that Mr. Benvie was working until those hours, cleaning up. Violation of rules to stay away after work hours ended. August 2-3. Mr. Benvie called in at 12:30 am to be picked up from work. Mr. Benvie clocked in at 1:08 am. Later learned that Mr. Benvie clocked out of work at 5:17 p.m. Mr. Agnes was trying to find accountability for hours between 5:17 and 12:30 am. Mr. Agnes viewed live stream video taped by Mr. Benvie evening of August 2, 2020. Mr. Benvie was downtown wandering the streets. Residents are suppose to call La Posada change of destination (whereabout) During video Mr. Benvie indicated it was 9:00 pm.

PassW3

Mr. Mondragon cross examination W3, Mr. Agnes Verification of work hours. General manager, hours vary. Employer stated Mr. Benvie would close down shop. Before August 2, 2020, no problem with accountability, just employer paying him correctly. Received time-card 3 days later by Ms. Sanner.

Ms. Camacho redirect examination W3, Mr. Anges Employer not paying Mr. Benvie correctly.

Court excuses W3

Government rests

Ms. Camacho closing arguments.

Mr. Mondragon calls Mr. Benvie Began working at Philly's phillys. General manager early September or October. Initially only working until 10:00 pm. Set up account with Burbon and boots. Started staying open until 2:00 am on weekends. Mr. Benvie supervised Ms. Sanner. August 2, time card clocked out 5:17 pm. Mr. Benvie had \$30,000 worth of damage before. Decided to make video to show what was happening outside of restaurant. Mr. Benvie was still working after clocked out at 5:17 p.m. Mr. Benvie shut down restaurant to video large group of people. Protecting restaurant. Mr. Benvie duties as general manager.

PassW4

Mr. Mondragon closing arguments.

Court finds Mr. Benvie violated conditions of release. Mr. Benvie has been removed from halfway house. Live streaming walking about downtown area. Mr. Benvie's conditions are hereby revoked. Mr. Benvie to remain in the custody of the USM. Sentencing hearing to be set.

2:45 p.m. Court adjourned